

STATE OF VERMONT  
HUMAN SERVICES BOARD

In re	)	Fair Hearing No. 20,912
	)	
Appeal of	)	

INTRODUCTION

The petitioner appeals a decision by the Department for Children and Families, Office of Vermont Health Access (OVHA) denying her request for comprehensive orthodontic authorization for her son under Medicaid. The issue is whether the son's condition meets the standard of severity or medical necessity for Medicaid coverage.

FINDINGS OF FACT

1. The petitioner has a thirteen-year-old son whose orthodontist recommended comprehensive orthodontia for him.

Petitioner's son first received orthodontic care when he was nine years old. Medicaid covered treatment to a single arch because he met two of the minor criteria for orthodontic treatment, anterior and posterior crossbite.

Petitioner is basing her present request for orthodontia on her son meeting one major criterion, two impacted cuspids. Her son's orthodontist submitted a Medicaid request for comprehensive orthodontia on June 6, 2007 on a form prepared

by OVHA. On that form, the orthodontist checked "2 impacted cuspids" under the major criteria. The orthodontist did not check any minor criteria, other handicapping malocclusion, or special medical considerations.

2. In a decision dated June 12, 2007, the Department denied the request for orthodontia. OVHA's consulting orthodontist determined that petitioner's son had one impacted cuspid and had another cuspid that was likely to erupt. OVHA's consulting orthodontist made his decision after a review of the Pan, study models, CEPH, and photos submitted by the referring orthodontist.

3. The petitioner filed an appeal on June 13, 2007. A hearing was commenced on July 29, 2007. At the hearing, petitioner testified that her son's permanent upper cuspids had not erupted even though two teeth had been extracted on or about October 30, 2006 to provide room for the permanent cuspids to erupt. Petitioner stated that braces would help pull her son's teeth into his mouth and would correct an overbite and crowding.<sup>1</sup> The son has an ovejet of 3mm which is less than the minor criteria of 8mm and has crowding of 6mm which is less than the minor criteria of 10mm.

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<sup>1</sup> Petitioner supplied documentation verifying the prior orthodontia and prior extractions.

4. On July 29, 2007, petitioner received copies of the Department's evidence including the Dental Basis Statement and Prior Authorization Form. The matter was continued to a status conference to allow the petitioner to review the Dental Basis Statement and Prior Authorization Form with the referring orthodontist and to allow the petitioner to submit additional documentation. In addition, the Department was asked to have their consultant confer with the referring orthodontist.

5. A telephone status conference was scheduled for July 20, 2007. Petitioner was not available and the status conference was rescheduled for August 14, 2007. On August 14, 2007, petitioner reported that her referring orthodontist would not submit further information and that she was seeking a second opinion. The Department reported that their consultant had spoken to the referring orthodontist and that they agreed that petitioner's son could wait one year for review as one of the cuspids was likely to erupt.

6. On August 14, 2007, the Department was told to send petitioner the updated Dental Basis Statement so petitioner could verify the information with her referring orthodontist. The case was reset for a telephone status conference on September 18, 2007. The Department did not timely send the

updated Dental Basis Statement to petitioner and the matter was reset for October 3, 2007 to determine next steps.

7. On October 3, 2007, petitioner indicated that she would not make her orthodontist available or offer additional evidence. Based on the status conference, the Department was asked to make a proffer which they did.

8. In the Department's proffer, the Department alleged that only one cuspid was impacted and one cuspid was likely to erupt. The Department alleged that their consultant conferred with the referring orthodontist on or about July 23, 2007 who agreed that one of the son's cuspids was likely to erupt and that it was fine to wait one year and then recheck the petitioner's son. The Department based their decision to deny orthodontia on their finding that petitioner's son did not have two impacted cuspids and, as a result, did not meet the major criteria for orthodontia.

9. Petitioner was informed that she could offer additional documentation or request direct evidence. She was asked to respond by October 24, 2007 and informed that if no response were made, a decision would be made based upon the materials submitted by the parties. No response was forthcoming.

ORDER

The Department's decision is affirmed.

REASONS

The Department has adopted regulations that require the Department to pay only for "medically necessary" orthodontic treatment for Medicaid recipients under the age of twenty-one. M622. M622.4 defines medical necessity as follows:

To be considered medically necessary, the beneficiary's condition must have one major or two minor malocclusions according to the diagnostic criteria adopted by the department's dental consultant or if otherwise necessary under EPSDT found at M100.

Based on the regulations and on the rulings of the Vermont Supreme Court, the Department developed a Prior Authorization Form that requests the diagnostic criteria for

major and minor occlusions<sup>2</sup> and requests other information documenting medical necessity through questions regarding other handicapping malocclusion or special medical considerations.

In this matter, the petitioner did not provide any evidence that her son met the minor criteria, other handicapping malocclusion, or specific medical consideration. The evidence is unclear whether the petitioner's son met a major criterion.

The original Prior Authorization Form listed two impacted cuspids. The Department's consultant reviewed the diagnostic materials supplied by the referring consultant and determined that petitioner's son only had one impacted cuspid. Additionally, the Department's consultant conferred

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<sup>2</sup> The criteria for major and minor malocclusions are as follows:

Major Criteria

Cleft palate  
2 impacted cuspids  
Severe Cranio-Facial Anomaly

Minor Criteria

1 impacted cuspid  
2 blocked cuspids per arch (deficient by at least 1/3 of needed space)  
3 congenitally missing teeth per arch (excluding third molars)  
Open bit 4+teeth, per arch  
Crowding per arch (10+mm)  
Anterior crossbite (3+teeth)  
Posterior crossbite (3+teeth)  
Traumatic deep bite impinging on palate  
Overjet 8+mm (measured from labial to labial)

with the referring orthodontist who indicated his agreement with the consultant.

Over the course of this case, the petitioner has been given opportunities to confer with the referring orthodontist, seek a second opinion, and present additional evidence. The petitioner has not presented additional documentation to buttress the claim that her son has two impacted cuspids.

When the Department denies a request for prior authorization, the burden of proving that prior authorization should be granted switches to the petitioner. The petitioner has not met this burden. The petitioner can reapply for authorization of her son's orthodontia if there is a change in her son's circumstances.

Therefore, the decision of the Department that her son's condition is not sufficiently severe for orthodontic coverage under the Medicaid program should be upheld. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 17.

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